IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10431 of 1994

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	NO
5	Whether it is to be circulated to the civil judge ?	NO

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DAHYABHAI JIVANBHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 4 & 1 - Respondent(s)

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Appearance :
MR PJ VYAS for Petitioner
MS REETA CHANDARANA, AGP for Respondent : 1
MR BJ JADEJA for Respondent(s) : 2 - 5.

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 14/08/2006

ORAL JUDGMENT

1. The issue involved in the present writ petition pertains to re-grant of lands admeasuring 8 Hectares, 86 Ares and 27 sq.mts. of Block

No.837 of village Nogama, Taluka Mandvi, District Surat (herein after referred to as the subject lands) under the policy of the State Government, prevailing at the relevant time.

2. The learned Assistant Government Pleader seeks leave to place on record the following documents:

(i) Government of Gujarat, Revenue Department, Circular, dated 1st February, 1972 which makes provision for disposal of lands that have been vested in the State Government for recovery of Government dues under Rule 129(4) of the Gujarat Land Revenue Rules, 1972 (the Rules);

(ii) Government Resolution dated 18th November, 1979 which makes provision for disposal of lands vested in the State Government for recovery of Government dues under Rule 129(4) of the Rules;

(iii) Order dated 11th October, 1982 whereby the subject lands were given to Shri Jivanbhai Lalbhai (deceased) on a yearly basis.

The aforesaid documents are relevant for the

purpose of adjudicating the controversy involved in the present petition. Hence, in the interest of justice, leave is granted. The aforesaid documents are taken on the record of this writ petition.

3. The facts of the case are that the subject lands had been granted to one Shri Jivanbhai Lalbhai (father of the petitioner and respondents No.2 to 5) under the provisions of section 32G read with section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948, and he, accordingly, held the same as owner thereof. During his lifetime, Shri Jivanbhai had encumbered the subject lands for the purpose of availing loan from the Gujarat Land Mortgage Bank (the Bank). As Shri Jivanbhai failed to pay the outstanding dues of the Bank, the subject lands were put up for auction under the provisions of Rule 129 of the Rules. Sub-rule (4) of Rule 129 of the Rules provides that where at any sale held under the provisions of Chapter XVIII, there is no bidder or the bids made are inadequate or nominal, it shall be lawful for the Collector to authorise any of his subordinates to purchase such property on behalf of the State Government for such bid as the subordinate may make. It appears that there was no bidder in the auction so held, hence the Mamlatdar purchased the subject lands on behalf of the State Government under the provisions of Rule 129 (4) of the Rules and accordingly, the

lands stood vested in the State Government by an order dated 29th/30th April, 1981. Corresponding entry was also made in the Revenue Record vide Mutation entry No.2484 dated 30th April, 1981.

4. It appears that under the then prevalent policy of the State Government as contained in the aforesaid Government Circular dated 1st February 1972, the debtor was entitled to re-grant of lands vested in the State Government. As per the provisions of Government Resolution dated 18th April, 1951 if the debtor, within a period of 12 years from the date of the auction requests for re-grant of such lands, then, if he is willing to pay the amount prescribed thereunder he is entitled to re-grant of the lands. By Government Resolution dated 18th November, 1978 the rate of interest and the period for which interest was to be recovered as prescribed under the aforesaid Circular, was amended. Though the aforesaid order dated 29th/30th April, 1981 has not been placed on record, it appears that the conditions prescribed under the aforesaid Circular and Government Resolution form part of the said order.

5. It appears that under the aforesaid policy of the State Government, the said Shri Jivanbhai was given the lands on a yearly basis and the aforesaid Order dated 11th April, 1982 appears

to be one such order granting lands on a yearly basis (ek-sali basis). The said order records that as the original landholder is entitled to re-grant of lands vested in the State Government within a period of 12 years upon payment of the prescribed amount, it has been decided to give the lands to the landholder for cultivating the same on a yearly basis. Accordingly, the said Shri Jivanbhai continued to hold the subject lands on a yearly basis and upon his death the petitioner and the respondents No.2 to 5 held the subject lands on the same conditions and their names were entered in the Revenue Record as heirs and legal representatives of the deceased Jivanbhai vide mutation entry No.2716 dated 10th March, 1989.

6. In the light of the fact that under the aforesaid policy of the State Government the original landholder was entitled to re-grant of the subject lands upon payment of the amount prescribed under the said policy, the petitioner Dahyabhai Jivanbhai Patel, being an heir of the original landholder, made an application dated 26th August, 1991, to the Collector, Surat, expressing willingness to pay the prescribed amount and requested that the subject lands be re-granted to him on a permanent basis. It is the case of the petitioner that in pursuance of the said application, the Collector caused an inquiry to

be made and that during the course of inquiry the respondents No.2 to 5 did not express willingness to pay the prescribed amount. Accordingly, a report to the aforesaid effect was submitted to the Collector, by the concerned Mamlatdar. By a letter dated 29th July, 1992 of the Collector, Surat, the petitioner was called upon to pay up the amount stated in the said letter within a period of 21 days thereof. The petitioner, accordingly, deposited the amount specified in the said letter, and produced the challan as proof of payment before the Collector along with a letter dated 18th August, 1992. By an order dated 17th September, 1992 the Collector, Surat, granted the subject lands to the petitioner on a permanent basis.

7. Being aggrieved by the aforesaid order dated 17th September, 1992 the respondents No.2 to 5 carried the matter in revision before the Secretary, Revenue Department (Appeals), respondent No.1 herein (hereinafter referred to as the Revisional Authority) being Revision Application No.1 of 1992. By an order dated 21st August, 1992 the revision application was allowed and the matter was remanded to the Collector for deciding the same afresh after giving the respondents No.2 to 5 an opportunity of hearing.

8. It is the case of the petitioner that in the

remand proceeding, the Collector heard the petitioner and the respondents No.2 to 5. However, the said respondents did not consent to pay the prescribed amount. Therefore, the request of the respondents was rejected and by an order dated 31st December, 1993, the Collector restored his earlier order dated 17th September, 1992 and ordered that the subject lands be granted to the petitioner on a permanent basis.

9. The aforesaid order dated 31st December, 1993 made by the Collector, Surat was challenged by the respondents No.2 to 5 by way of revision before the respondent No.1. By the impugned order dated 23rd June, 1994, the Revision Application was allowed and the order dated 31st December, 1993 of the Collector, Surat was quashed and set aside, giving rise to the present petition.

10. Heard Mr. P.J. Vyas learned Advocate for the petitioner, Mr. B.J. Jadeja learned Advocate for the respondents No.2 to 5 and Mrs. Reeta Chandarana learned Assistant Government Pleader for the respondents No.1 and 6.

11. Mr. P.J. Vyas learned Advocate for the petitioner, assailed the impugned order of the Revisional Authority. It was argued that the order of the Revisional Authority was not only illegal and against justice and equity but was

also perverse. It was submitted that the Revisional Authority had recorded a finding that the names of the respondents No.2 to 5 have been entered in the Revenue Record as heirs of the deceased Jivanbhai in respect of the subject lands, hence, all the heirs have a right in the subject lands. It was submitted that the said finding was not only erroneous, but was perverse inasmuch as the Revisional Authority has failed to appreciate that once the subject lands were entered under Government head in the year 1981, the name of deceased Jivanbhai stood deleted by operation of law. Therefore, upon the death of Shri Jivanbhai on 4th April, 1983, the question of entering the names of his heirs in the Revenue Record did not arise at all.

12. It was submitted that before the Collector, the respondents No.2 to 5 had not given their consent to pay the prescribed amount for re-grant of the subject lands. It was in these circumstances, that the Collector has made the order granting the subject-lands in favour of the petitioner. Therefore, the finding recorded by the Revisional Authority that the lands could be granted in favour of the petitioner only if the respondents No.2 to 5 relinquish their right in the said lands is perverse.

13. It was next contended that the finding recorded by the Revisional Authority that upon re-grant

of the subject lands in favour of the petitioner, the respondents No.2 to 5 are ipso facto entitled to a share in the property despite their having refused to pay their share of the prescribed amount, tantamounts to depriving the petitioner of the subject lands. It was pointed out that upon payment of the prescribed amount, the petitioner had been put in possession of the subject lands and equity had accrued in his favour, hence, the same cannot be taken away by the impugned order.

14. Attention was drawn to the fact that while setting aside the order of the Collector, the Revisional Authority had failed to pass any consequential order, either of remand or issuing direction to the parties, to submit that the impugned order suffered from yet another infirmity.

15. Last but not least, it was vehemently contended that till date, the respondents No.2 to 5 have not made any application for re-grant of the subject lands to the Collector, Surat. It was submitted that in the absence of any such application, there was no question of re-granting the subject lands to the said respondents. Besides, now that the period of twelve years from the date of the auction has elapsed, the time limit for making any such application has also expired. Hence, the respondents No.2 to 5 are not entitled to the

re-grant of the subject lands in any manner whatsoever.

16. Mr. B.J. Jadeja, learned Advocate for the respondents No.2 to 5, resisted the petition. It was submitted that the Revisional Authority was fully justified in setting aside the order dated 31st December, 1993 passed by the Collector, Surat. It was urged that the respondents No.2 to 5 being heirs and legal representatives of the deceased Jivanbhai had a vested right to be re-granted the subject lands subject to payment of the prescribed amount within a period of twelve years from the date of the auction. It was pointed out that the auction took place on 29th April, 1981, hence in terms of the order dated 29th/30th April, 1981, it was open to the respondents No.2 to 5 to exercise their right of re-grant by paying the prescribed amount till the expiry of the period of 12 years from the date of the auction, i.e., till 30th April, 1993. It was contended that the rights of the respondents No.2 to 5 to re-grant of the subject lands had been preempted by order dated 17th September, 1992 passed by the Collector, Surat, whereby he had re-granted the whole of the subject lands in favour of the petitioner before the expiry of the period of 12 years from the date of auction. It was submitted that the petitioner being an heir of the deceased Jivanbhai, had a right to re-grant of the subject lands, but only to the extent of

his one-fifth share as an heir of the deceased.

17. Supporting the impugned order of the Revisional Authority, it was submitted that the Revisional Authority was justified in holding that even if the petitioner alone had paid the prescribed amount, the rights in the subject lands would also enure in favour of the respondents No.2 to 5. It was submitted that the right of petitioner to re-grant of the subject lands being limited to his one-fifth share, the whole of the lands could not have been re-granted to him in any eventuality.

18. In response to the contention that the respondents No.2 to 5 had not made any application for re-grant of the subject lands, it was pointed out that once the whole of the subject-lands had been granted in favour of the petitioner vide the order dated 17th September, 1992, there was no point in making any application before the Collector, despite the fact that the period of 12 years from the date of the auction had not expired. Therefore, the respondents No.2 to 5 had challenged the said order by way of revision before the State Government, wherein they had expressed their willingness to pay the required amount and prayed that to the extent of their respective shares, the subject lands be granted in their favour. It was submitted that the Revision Application was made before the expiry of the

period of 12 years, hence, the contention that the respondents No.2 to 5 had not made any application for re-grant of the subject lands is wholly misconceived and deserves to be rejected.

19. The learned Assistant Government Pleader supported the reasoning adopted by the Revisional Authority.

20. From the facts noted above, it is apparent that under the policy of the State Government, the original landholder, (in the present case the deceased Shri Jivanbhai) was entitled to re-grant of the lands subject lands upon payment of the prescribed amount within a period of twelve years from the date of the auction. The date of auction being 29th April, 1981 the time limit for payment of prescribed amount would be up till 28th April 1993. Therefore, till 28th April, 1993 the heirs of Shri Jivanbhai were entitled to the re-grant of the subject lands on condition of payment of the prescribed amount within the said period. Admittedly, on the date when the petitioner applied for re-grant as well as on the date when the subject lands were initially re-granted in his favour, the said period of 12 years had not expired. Therefore, when the order of re-grant was made respondents No.2 to 5 had a subsisting right to the re-grant of the subject lands to the extent of their respective shares in the subject

lands. Merely because no application had been made before the date of the said order, or because purportedly the respondents No.2 to 5 did not respond when called upon by the Circle Inspector, it cannot be presumed that the respondents No.2 to 5 had given up their right to re-grant. In the circumstances, the learned Advocate for the respondents is justified in contending that the right of the respondents No.2 to 5 for re-grant of the subject lands had been taken away by the aforesaid order whereby the entire lands had been granted in favour of the petitioner before the expiry of the stipulated period during which they could have exercised their right of re-grant. Thus, once the order re-granting the subject lands in favour of the petitioner had been made, making an application for re-grant of the very same lands to the Collector would have been an exercise in futility. Therefore, the respondents NO.2 to 5 were perfectly justified in challenging the said order of the Collector by way of revision and at the same time seeking re-grant of the said lands expressing willingness to pay the prescribed amount.

21. It may be pertinent to note that the right to re-grant of land is provided under the policy of the State Government noted hereinabove. The said policy does not prescribe any procedure for re-grant of land. All that it says it that if the landholder pays the prescribed amount

before the stipulated period he shall be entitled to re-grant of the lands. In absence of any prescribed procedure, the request made in the Revision Application, which was within the period of 12 years from the date of auction, can very well be said to be an application for re-grant of land, which was the best the respondents No.2 to 5 could do, in the light of the facts narrated hereinabove. Therefore, the contention that the respondents No.2 to 5 having not made any application before the Collector within the stipulated period are not entitled to re-grant of the subject lands, deserves to be rejected.

22. It may be pertinent to note that after the subject lands had vested in the State Government the same had been given on yearly lease to Jivanbhai Patel; and upon his death to his heirs who continued to occupy the same till the date the said lands were re-granted in favour of the petitioner. It appears that pursuant to the subject-lands being re-granted to the petitioner, the respondents No.2 to 5 were dispossessed of the lands occupied by them and the same were handed over to the petitioner. Thus, despite the fact that the petitioner had a right to re-grant of one-fifth of the subject lands, upon his paying the whole of the prescribed amount, the whole of the subject lands had been re-granted to him thereby depriving the respondents No.2 to 5 of

their right to cultivate the said lands on a yearly basis for a period of twelve years as well as depriving them of their right to re-grant of the subject lands within the stipulated period. Hence, before depriving the respondents No.2 to 5 of their rights over the subject-lands it was incumbent upon the Collector to give them sufficient opportunity of hearing. In any case, their right to re-grant of land could not have been preempted before the expiry of the stipulated period of 12 years from the date of auction, merely because the petitioner had shown willingness to pay the entire amount.

23. While it is true that the petitioner had only one-fifth share in the subject lands and hence could have exercised his right to re-grant only qua his one-fifth share, it is also true that under the policy there could not have been any piece-meal payment of the prescribed amount. Under the policy of re-grant, the land could be re-granted only upon payment of the following amounts: entire principal amount of loan, interest at the rate of 8%, the expenditure incurred by the Government towards the auction (5% of the principal amount), penalty equivalent to 25% of the principal amount and loss caused to the Government towards revenue assessment on account of the lands being vested in the State Government. The policy does not envisage piece-meal payment for re-grant of

lands to the extent of the share of each co-owner. The landholder was entitled to re-grant of the lands only upon payment of the entire prescribed amount. Hence, even to exercise his right to re-grant of one-fifth of the subject lands the petitioner would have been required to pay the entire prescribed amount as the policy does not envisage re-grant of part of the lands upon payment of part of the prescribed amount. On the other hand, upon payment of the entire prescribed amount the Government also could not grant only part of the lands but was bound to re-grant the entire lands, however, before re-granting the entire lands to the petitioner, it was incumbent upon the Collector to issue notices to the other co-owners, more so because the period or 12 years was not over, and the respondents No.2 to 5 had a subsisting right to re-grant of the subject lands subject to the payment of the stipulated amount. The Collector ought to have given the respondents No.2 to 5 an opportunity to be heard as well as a chance to exercise their right to re-grant subject to payment of the prescribed amount within the stipulated time i.e., within 12 years from the date of the auction. Hence, the contention raised on behalf of the respondents that in any event, the petitioner could have been granted only one fifth of the lands does not merit acceptance. If the respondents No.2 to 5 failed to exercise their right within the stipulated period of 12

years from the date of auction, it was open to the Collector to re-grant the subject lands to the petitioner or to those of the heirs of the deceased Jivanbhai who came forward to exercise their rights within the said period. In the event the respondents No.2 to 5 had not chosen to exercise their right to re-grant, the subject lands could certainly have been granted to the petitioner in the light of the fact that the policy does not envisage piece-meal payment and consequently, upon payment of the entire prescribed amount, the whole of the subject–lands could have been re-granted to the petitioner and not merely the petitioner's one-fifth share. The infirmity in the action of the Collector is in re-granting the entire lands in favour of the petitioner before the prescribed period was over, that too without giving the respondents No.2 to 5 an opportunity of hearing.

24. The contention raised on behalf of the respondents No.2 to 5 that the report submitted by the Mamlatdar to the effect that the respondents No.2 to 5 had not given their consent to pay the prescribed amount was prior in point of time to the Revision Application made by the respondents No.2 to 5 which had culminated into the order of remand dated 28th January, 1993, hence, when the Revisional Authority after considering the said fact had remanded the matter to the Collector for taking

a fresh decision, the Collector could not have relied upon the said report to reject the application of the respondents No.2 to 5, merits acceptance. In the remand proceeding it was the case of the respondents No.2 to 5 that they were seeking re-grant of the subject lands to the extent of their shares in the same and that were ready and willing to pay the amount due and payable towards re-grant of the said lands. However, as can be seen from the order dated 31st December, 1993 passed by the Collector, Surat, he has rejected the request of the respondents No.2 to 5 on the basis of the same material on which the earlier order was passed. The Collector has observed that while processing the application made by the petitioner, inquiry had been made and the consent of the respondents No.2 to 5 as regards their willingness to jointly pay the prescribed amount was sought, however, they had not given their consent. That despite the fact that they were informed regarding the re-grant proceeding through the Circle Inspector, the respondents No.2 to 5 had not made any application to be joined as co-owners either to the Collector or to the Mamlatdar. That they have not raised any objection during the re-grant proceeding. Accordingly, on the basis of the inquiry report of the Mamlatdar, the subject lands had been re-granted to the petitioner by the order dated 17th September, 1992 which is reasonable and proper. The Collector has held that the

intention of the respondents No.2 to 5 for re-grant of lands is not bona fide in that they had not taken any steps to obtain the said lands and had submitted their claim after the proceeding of re-grant was over, hence, at this stage the said claim cannot be accepted. Lastly the Collector has recorded that the respondents No.2 to 5 had been given opportunity of producing evidence and had been heard as directed by the Secretary, Revenue Department (Appeals). The last observation by the Collector creates an impression that the opportunity of hearing was an empty formality, which was required to be given only because the Revisional Authority had directed him to do so. As can be seen from the order of the Collector, he has merely relied upon the earlier proceeding and rejected the claim of the respondents No.2 to 5. The Collector has also observed that the respondents No.2 to 5 have not made any application for re-grant of the subject lands which on the face of it is contrary to the evidence on record, in that the respondents No.2 to 5 had challenged the initial order of re-grant by way of revision before the State Government, which was within a period of twelve years from the date of auction, wherein they have specifically stated that they were ready and willing to pay the amount payable towards re-grant of the subject lands. It is therefore, apparent that the said respondents had not given up their right to re-

grant of the subject lands and they having applied before the period of 12 years from the date of the auction, the Collector ought to have considered their claim. On a plain reading of the order of the Collector, it is apparent that he has treated the opportunity of hearing to be a mere formality and has confirmed the earlier order. In the circumstances the said order of the Collector was not sustainable and has rightly been set aside by the Revisional Authority.

25. Insofar as the impugned order of the Revisional Authority is concerned, the observation that even if only one of the co-owners makes the payment, the benefit would enure in favour of all the co-owners does not appear to be a correct proposition of law. Upon the lands being subjected to auction, the same vested in the State Government. All that remained with the original owner was the right to re-grant subject to payment of the prescribed amount. All the co-owners would have a right to re-grant subject to the aforesaid condition. However, if other co-owners do not choose to exercise their right, or give up their right and one of the co-owners alone exercises his right, the re-grant would not enure in favour of all. In the facts of the present case, since the petitioner had already deposited the entire amount, in the remand proceeding, the Collector ought to have called upon the respondents No.2

to 5 to make payment to the extent of their shares and upon receipt of such amount ought to have returned the same to the petitioner. In case, the respondents No.2 to 5 failed to exercise their right of re-grant by making payment of their share of the prescribed amount, the Collector could have re-granted the subject lands to the petitioner.

26. Upon an overall view of the matter, the order of the Collector could not have been sustained as apparently the Collector has not considered the matter afresh and confirmed the earlier order treating the opportunity of hearing given to the respondents No.2 to 5 to be a mere formality. Hence, the Revisional Authority was justified in setting aside the same.

27. However, the petition deserves to be partly allowed as the observations of the Revisional Authority to the effect that even if the petitioner alone has paid the prescribed amount the right over the subject lands would enure in favour of all the heirs of the deceased Jivanbhai cannot be sustained. The order of the Revisional Authority is accordingly set aside to the aforesaid extent.

28. It is true that the Revisional Authority while passing the impugned order has failed to issue consequential directions after setting aside the order of the Collector, however, the said

infirmity can be cured by this Court by issuing appropriate directions, hence the same would not vitiate the order of the Revisional Authority. In the light of the aforesaid facts it is deemed just and proper in the interest of justice to direct the Collector, Surat to issue notices to each of the respondents No.2 to 5 individually, calling upon them to state as to whether they desire that the subject-lands be re-granted to them to the extent of their shares in the same and as to whether they are willing to pay their share of the prescribed amount within a reasonable period of time as may be fixed by the Collector. The respondents No.2 to 5, if they wish to exercise their right of re-grant shall make payment of the prescribed amount to the extent of their share in the first instance to the Collector, Surat, within the said period. Upon receipt of such amount, the Collector, shall pass appropriate orders re-granting the lands to the extent of the share of each of the respondents who pays up the amount as directed above, and hand over possession of their share of the subject lands. The Collector shall, as soon as the possession of their share in the subject lands is handed over to those of the respondents No.2 to 5 who choose to exercise their right of re-grant, forthwith pay the entire amount so received from the said respondents to the petitioner. It is clarified that if the respondents No.2 to 5 do not choose to exercise their respective

right to re-grant, the order dated 17th September, 1992 granting the subject lands in favour of the petitioner shall stand revived.

29. As the petitioner has paid the whole of the amount liable to be paid towards re-grant of the subject lands, in August 1992, whereas in terms of this order, the respondents No.2 to 5, if they choose to exercise their right to re-grant, would be liable to pay their share only in the year 2006, that is almost 14 years after the payment made by the petitioner, this Court has considered the issue as regards the payment of interest to the petitioner from the date of deposit of the prescribed amount till the same is repaid by the respondents No.2 to 5. However, considering the fact that, upon re-grant of the subject land to the petitioner before the expiry of the period of 12 years, the respondents No.2 to 5 had been deprived of the use of their share of the subject lands, and the petitioner has right from 1992, throughout enjoyed the benefit of the subject lands, it does not appear equitable to impose any interest upon the respondents No.2 to 5.

30. Rule is made absolute accordingly. The parties shall bear their own costs.

[HARSHA DEVANI, J.]

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